

(v) *Form of election.* The election shall be in writing and clearly indicate that the participant is electing the joint and survivor annuity form.

(vi) *Election is revocable.* An election under this subparagraph may be revoked in writing during the election period. After an election has been revoked, another election under this subparagraph may be made during the election period. See paragraph (c) of this section, relating to the right to elect not to take the joint and survivor annuity form.

(e) *Marriage requirements.* (1) A plan shall be treated as satisfying the requirements of this section even though it requires the participant and his spouse to have been married to each other on the annuity starting date.

(2) A plan shall be treated as satisfying the requirements of this section even though it provides that the spouse of the participant is not entitled to receive a survivor annuity (whether or not the election described in paragraph (d)(3) of this section has been made) unless the participant and his spouse have been married to each other throughout the 1-year period ending on the date of such participant's death.

(f) *Effect of participant's death on an election or revocation of an election under paragraph (c) or (d)(3).* A plan shall not be treated as not satisfying the requirements of this section merely because the plan contains a provision that any election made under paragraph (c) or (d)(3) of this section and any revocation of any such election does not become effective or ceases to be effective if the participant dies within a period, not in excess of 2 years, beginning on the date of such election or revocation. A plan containing a provision described in the preceding sentence shall not satisfy the requirements of this section unless it also provides that any such election and any revocation of any such election will be given effect in any case in which—

(1) The participant dies from accidental causes,

(2) A failure to give effect to the election or revocation would deprive the participant's survivor of a survivor annuity, and

(3) Such election or revocation is made before such accident occurred.

(g) *Costs of providing joint and survivor annuity form.* A plan may take into account in any equitable manner consistent with generally accepted actuarial principles applied on a consistent basis any increased costs resulting from providing joint and survivor annuity benefits.

(h) *Application and effective date.* (1) Section 401(a)(11) and this section shall apply to a plan only with respect to plan years to which section 411 (relating to minimum vesting standards) is applicable to the plan.

(2) Section 401(a)(11) and this section shall apply if—

(i) The participant's annuity starting date falls within a plan year beginning after December 31, 1975, and

(ii) The participant was an active participant in the plan on or after the first day of the first plan year beginning after December 31, 1975.

For purposes of this paragraph, the term "active participant" means a participant for whom benefits are being accrued under the plan on his behalf, the employer is obligated to contribute to or under the plan on his behalf, or the employer would have been obligated to contribute to or under the plan on his behalf if any contributions were made to or under the plan.

(Sec. 401(a)(11) of the Internal Revenue Code of 1954, 88 Stat. 935 (26 U.S.C. 401(a)(11)))

[T.D. 7379, 40 FR 45810, Oct. 3, 1975; 40 FR 49326, Oct. 22, 1975]

#### § 11.401(a)-19 Nonforfeiture in case of certain withdrawals.

(a) *Application of section.* Section 401(a)(19) and this section apply to a plan to which section 411(a) applies. (See section 411(e) and § 11.411(a)-2 for applicability of section 411.)

(b) *Prohibited forfeitures*—(1) *General rule.* A plan to which this section applies is not a qualified plan (and a trust forming a part of such plan is not a qualified trust) if, under such plan, any part of a participant's accrued benefit derived from employer contributions is forfeitable solely because a benefit derived from the participant's contributions under the plan is voluntarily withdrawn by him after he has become a 50 percent vested participant.

(2) *50 percent vested participant.* For purposes of paragraph (b)(1) of this section, a participant is a 50 percent vested participant when he has a non-forfeitable right (within the meaning of section 411 and the regulations thereunder) to at least 50 percent of his accrued benefit derived from employer contributions.

(3) *Certain forfeitures.* Paragraph (b)(1) of this section does not apply in the case of a forfeiture permitted by section 411(a)(3)(D)(iii) and § 11.411(a)-4(b)(5)(i) (relating to forfeitures of certain benefits accrued before September 2, 1974).

[T.D. 7387, 40 FR 51421, Nov. 5, 1975]

**§ 11.401(b)-1 Certain retroactive changes in plan.**

(a) *General rule.* (1) Under section 401(b), a stock bonus, pension, profit-sharing or annuity plan or bond purchase plan which does not satisfy the requirements of section 401(a) on any day solely as a result of a disqualifying provision (as defined in paragraph (b) of this section) shall be considered to have satisfied such requirements on such day if there is adopted during the remedial amendment period (as determined under paragraphs (c) and (d) of this section) with respect to such disqualifying provision an amendment which causes the plan to satisfy all such requirements of section 401(a), 403(a) or 405(a) for the whole of the remedial amendment period (including extension thereof).

(2) This section shall not apply to any disqualifying provision if the remedial amendment period (as determined under paragraphs (c) and (d)(1) of this section determined without regard to paragraph (d)(2) of this section) with respect to such disqualifying provision ends prior to September 2, 1974.

(b) *Disqualifying provisions.* For purposes of this section, with respect to a plan described in paragraph (a) of this section the term "disqualifying provision" means any provision of—

(1) A plan as adopted,

(2) A plan amendment, or

(3) The Employee Income Security Act of 1974 (Pub. L. 93-406, 88 Stat. 829), which causes such plan to fail to satisfy the requirements of section 401(a), 403(a), or 405(a).

(c) *Remedial amendment period.* (1) The remedial amendment period with respect to a disqualifying provision begins on the effective date of the disqualifying provision. For purposes of this section, the effective date of a disqualifying provision is—

(i) In the case of a disqualifying provision in a plan as adopted, the date the plan is put into effect,

(ii) In the case of a plan amendment, the date the plan amendment is adopted or put into effect (whichever is earlier), or

(iii) In the case of a statutory provision described in paragraph (b)(3) of this section, the effective date of such provision.

(2) Unless extended as provided by paragraph (d) of this section, the remedial amendment period ends with the time prescribed by law (including extensions) for filing the return of the employer for the employer's taxable year in which falls—

(i) With respect to a disqualifying provision in a plan as adopted, or a plan amendment, the later of the date on which such provision was adopted or put into effect.

(ii) With respect to a statutory provision described in paragraph (b)(3) of this section, the effective date of such provision.

(d) *Extension for determination letters—*

(1) *In general.* If, before the end of the remedial amendment period (determined without regard to this paragraph) with respect to a disqualifying provision, the employer or plan administrator files a request pursuant to § 601.210(o) of this chapter (Statement of Procedural Rules) for a determination letter with respect to the initial qualifications of the plan or the effect of such disqualifying provision on the qualified status of the plan (or a trust which is part of a plan) under section 401(a), 403(a), or 405(a), then except as provided in subparagraph (3) of this paragraph, such remedial amendment period may be extended for a period not to exceed 150 days, beginning on the day after the last day of the employers taxable year in which falls the dates described in subdivisions (i) and (ii) of paragraph (c)(2) of this section. The 150-day period does not include any day on which there is pending before the